IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 460 OF 2001

The Commissioner of Income Tax,
Central-II, Mumbai .. Appellant

v/s.

M/s. Premier Automobiles Ltd. .. Respondent

Mr.K.R.Chaudhary i/by Mr. H.D.Rathod for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

P.C.

Heard Mr. K.R.Chaudhary, the learned counsel for the revenue.

2. The Tribunal considered the controversy in question thus-

> "7. The total income in this case was assessed at Rs.14,08,26,470/- against the returned income of Rs.6,45,64,810/-. Assessee had filed statement of advance tax in Form 28A on 15.6.83 showing business income as loss and total income subject to advance tax was shown at nil. This statement was filed after the close of the previous year. As the estimate of advance tax payable was not filed by the assessee u/s.209A(4), penalty proceedings u/s.273(2)(c) were initiated. Assessee's response to the show-cause notice was that at the relevant time, the last completed assessment was that of A.Y. 1979-80, which was a loss assessment and the income declared by it for subsequent A.Y. i.e. 1980-81, 1981-82 and 1982-83 was nil income.

In view of this fact, it was submitted that there was no liability to pay advance tax u/s.209A(i). Since it had no liability u/s.209A(i), it was contended that, assessee was not liable to file higher estimate of advance tax u/s.209A(4) also. In view of this, it was submitted that assessee had not committed any default either U/s.209A or U/s.212.

The AO rejected the explanation of the assessee and levied the impugned penalty.

8. CIT(A) cancelled the penalty hereby relying on the order of the Tribunal in assessee's own case for the present Assessment Year wherein interest u/s.217 was deleted.

9. A copy of the above mentioned order of the Tribunal in ITA No.3856/Bom/1987 dt.2.7.91 is placed on record. By the said order, Tribunal has accepted the contention of the assessee which has been discussed above. Tribunal has also placed reliance on the decision of the Bombay High Court in the case reported in 165 ITR 99. Since the Tribunal has accepted the contention of the assessee, as regards levy of interest u/s.217, the same being applicable in penalty proceedings also, the order of the CIT(A) cancelling the penalty is upheld."

3. The consideration of the matter by the Tribunal cannot be said to suffer from any error of law. No substantial question of law arises. Appeal is dismissed.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)